

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 813 of 1999

in

SPECIAL CIVIL APPLICATION No 10867 of 1998

AND

LETTERS PATENT APPEAL NO. 847 OF 1999

in

SPECIAL CIVIL APPLICATION NO. 10866 OF 1998

and

CIVIL APPLICATIONS NOS. 5283 & 5353 OF 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

and

Hon'ble MR.JUSTICE R.R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

UNION OF INDIA

Versus

AVINDHAR P SHAH

Appearance:

MS PJ DAWAWALA for Appellants

MR SATYAN THAKKAR for MR KS NANAVATI for respondent

CORAM : MR.JUSTICE M.R.CALLA

and

MR.JUSTICE R.R.TRIPATHI

Date of decision: 21/09/2000

COMMON ORAL JUDGEMENT (per M.R.Calla, J.)

These two Letters Patent Appeals are directed against the common judgment and order dated 16th March 1999 rendered by the learned Single Judge in Special Civil Applications Nos.10867 and 10866 of 1998.

2. The respondent - original petitioner Shri Avindhar P.Shah, Power of Attorney holder of Rashmindhar P.Shah and also holding the Power of Attorney of Pallavi M. Parikh, had opened two separate Accounts in the Postal Department under the National Savings Scheme, 1987. When the request was made for closure of the said Accounts, the Postal Department, paid the principal amount of the deposits made in these Accounts but refused to release the amount of interest accrued on the principal amount on the ground that the opening of the Account itself was irregular on the ground that such Account could not be opened through Power of Attorney holder. The request was also made by the original petitioner for regularisation of the Account but that was also declined. Challenging the denial of the payment of the interest accrued on the deposits in these two Accounts, two separate petitions as aforesaid were filed.

3. We find that the factum that the accounts were opened through the Power of Attorney holder had not been suppressed or concealed and the Department knew it very well at the time when the Account was opened that it was being opened through the Power of Attorney holder. After the Account has remained operative for number of years and the deposits have been accepted therein, when it comes to the question of closure of the Account, to deny the payment of the interest on the ground that the opening of the Account itself was irregular and that it was contrary to the clarifications given by the Finance Department, cannot be said to be justified. The learned Single Judge has given reasons in detail in para 7, 8, and 9 of the impugned order for allowing the petitions. The learned Single Judge has also mentioned in the body of the order that the matter was covered by two earlier decisions of this Court, i.e. in Special Civil Application No. 6794 of 1987 decided on 2nd March 1988 and in Special Civil Application No.3088 of 1988 decided on 24th December 1993. Even if it is assumed that opening of the Account was contrary to the clarifications issued by the Finance Department and that the Account

could not be opened through the Power of Attorney holder, it may entail an action against the officials who did not adhere to the clarifications of the Finance Department but the members of the public who come to open the Account in a National Savings Scheme cannot be told after number of years when they want to close the Account that they will not be entitled to any interest and the members of the public at large cannot be made to suffer any prejudice on account of such violations of no significant consequence. Even otherwise, if there is any irregularity in the opening of the Account, it cannot entail in the forfeiture of the interest accrued on the deposits made therein for no fault on the part of the person who opened the Account or on the part of the person through whom the Account was opened, unless it is made out that any important or material fact was suppressed or concealed which is not the case against the original petitioners.

4. We fully agree with the reasons given by the learned Single Judge and do not find any reason to interfere with the order passed by the learned Single Judge. There is no merit in these two Letters Patent Appeals, so far as the main claim is concerned. So far as the grant of cost of Rs.2,000/- each in each of these parties is concerned, Mr.Satyan Thakkar appearing on behalf of the original petitioners, i.e. respondents herein has stated that the respondents in each of these two Letters Patent Appeals would not claim the cost and he waives and foregoes the cost as has been awarded by the learned Single Judge. Thus the order with regard to the payment of costs to the appellants is not to be enforced against the appellants and we order accordingly.

5. Both these Letters Patent Appeals are, therefore, allowed to the limited extent i.e. the direction with regard to the payment of costs is hereby set aside. Both these Appeals are partly allowed to the extent as above.

6. In view of the order passed in the main Appeals, no orders are required to be passed in the Civil Applications for stay. Both the Civil Applications for stay are hereby disposed of.

(M.R. Calla, J.)

(R.R.Tripathi, J.)
Sreeram.